Supreme Court, U.S.
FILED
JUL 24 1996
CLERK

(2)

No. 95-2064

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1996

ELAINE A. LORD, Superintendent of Bedford Hills Correctional Facility; and DENNIS VACCO, Attorney General of the State of New York,

*Petitioners,*

vs.

SHEILA RYAN DeLUCA,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## BRIEF IN OPPOSITION FOR RESPONDENT SHEILA RYAN DELUCA

MARK F. POMERANTZ
ROGERS & WELLS
200 Park Avenue
New York, New York 10166
(212) 878-8000
*Counsel of Record*

DAVID T. GRUDBERG
JACOBS, GRUDBERG, BELT & DOW, P.C.
350 Orange Street — P.O. Box 606
New Haven, Connecticut 06503

WARREN L. FELDMAN
DAVID E. MCCRAW
ROGERS & WELLS

18 pp

## QUESTION PRESENTED

Whether, on the particular facts and circumstances of this case, the court of appeals erred in applying the standards of *Strickland v. Washington*, 466 U.S. 668 (1984), to respondent's claim of ineffective assistance of counsel.

## TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTION PRESENTED | i |
| TABLE OF AUTHORITIES | v |
| OPINIONS BELOW | 1 |
| JURISDICTION | 1 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 2 |
| STATEMENT | 2 |
| 1. The State Court Proceedings | 2 |
| 2. The Federal Court Proceedings | 4 |
| A. The Hearing | 4 |
| B. The District Court's Decision | 7 |
| C. The Court of Appeals' Decision | 7 |
| ARGUMENT | 8 |
| CONCLUSION | 14 |

## TABLE OF AUTHORITIES


| **Cases** | **Page** |
|---|---|
| *Fields* v. *United States*, 205 U.S. 292 (1907) | 9 |
| *Jones* v. *Page*, 76 F.3d 831 (7th Cir. 1996) | 13 |
| *People* v. *DeLuca*, 110 A.D.2d 1091, 488 N.Y.S.2d 529 (1st Dep't), *leave to appeal denied*, 65 N.Y.2d 978 (1985), *cert. denied*, 475 U.S. 1012 (1986) | 3 |
| *Strickland* v. *Washington*, 466 U.S. 668 (1984) | *passim* |
| *United States* v. *Johnston*, 268 U.S. 200 (1925) | 9 |
| **Constitutional Provisions** | |
| United States Constitution, Sixth Amendment | 2 |
| United States Constitution, Fourteenth Amendment | 2 |
| **Statutes** | |
| 28 U.S.C. §1254 (1) | 1 |
| New York Penal Law §125.20(2) | 3 |
| New York Penal Law §125.25(1)(a) | 3 |
| New York Crim. Proc. Law §440.10 | 3 |

No. 95-2064

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1996

ELAINE A. LORD, Superintendent of Bedford Hills Correctional Facility; and DENNIS VACCO, Attorney General of the State of New York,

*Petitioners,*

vs.

SHEILA RYAN DELUCA,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

## BRIEF IN OPPOSITION FOR RESPONDENT SHEILA RYAN DELUCA

### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is published at 77 F.3d 578. The order and decision of the district court (Pet. App. B) is published at 858 F. Supp. 1330.

### JURISDICTION

The judgment of the court of appeals was entered on February 13, 1996. A petition for rehearing was denied on March 28, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides as follows: "In all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense."

The Fourteenth Amendment to the United States Constitution provides as follows: "...[N]or shall any State deprive any person of life, liberty, or property, without due process of law...."

## STATEMENT

Petitioners Elaine A. Lord and Dennis Vacco ("petitioners") seek review of a judgment of the United States Court of Appeals for the Second Circuit affirming a judgment of the United States District Court for the Southern District of New York granting respondent Sheila Ryan DeLuca's petition for a writ of habeas corpus, setting aside her prior state court conviction, and ordering a new trial. The court of appeals concluded that Mrs. DeLuca had received ineffective assistance of counsel in her state court trial for the murder of Robert Bissett when her attorney failed to consider adequately the possibility of a defense based on Extreme Emotional Disturbance ("EED") despite having strong evidence that Mrs. DeLuca had been abducted, assaulted, and raped by Bissett shortly before he was shot.

### 1. The State Court Proceedings

Prior to the district court's ruling, Mrs. DeLuca, a former nun, teacher, and New York City policewoman, had served more than 10 years in a New York State prison following her conviction of murder for the September 22, 1982 shooting of Bissett, who was found dead in his van in New York City. At trial, the People alleged that Mrs. DeLuca, who had just retired from the police force, voluntarily joined Bissett and two of his friends, all who were complete strangers to her, in a partying spree that began at an after-hours club in the Bronx. Pet. App. A at 32. The People theorized that Mrs. DeLuca

then had consensual sexual relations with Bissett in his van and shot him immediately thereafter. *Id.* Mrs. DeLuca was portrayed by the prosecution as "a sinister figure -- an older woman who lured her young prey into a sexual assignation and them killed him." *Id.* The People offered a variety of circumstantial evidence connecting Mrs. DeLuca to the shooting. Testimony revealed that she had been the last person seen with Bissett, that her pistol was the weapon used in the killing, that seminal fluid on her clothes matched Bissett's blood type, and that her husband, Peter DeLuca, had directed police to the location of the body. *Id.* at 29-31. The People also introduced a statement Mrs. DeLuca made to police about the rape as evidence of a fabrication designed to mask her guilt. *Id.* at 31. The defense rested without calling any witnesses after the trial court refused a defense proffer of testimony from a rape trauma expert. *Id.* at 32.

Mrs. DeLuca was convicted upon a jury verdict of murder in the second degree (New York Penal Law § 125.25[1]) and sentenced to an indeterminate term of imprisonment of 20 years to life. *Id.* Her conviction was affirmed on appeal in the state courts. *People v. DeLuca*, 110 A.D.2d 1091, 488 N.Y.S.2d 529 (1st Dep't), *leave to appeal denied*, 65 N.Y.2d 978 (1985), *cert. denied*, 475 U.S. 1012 (1986).

On May 3, 1989, Mrs. DeLuca moved in New York State Supreme Court, Bronx County, to vacate her conviction pursuant to New York Crim. Proc. Law. § 440.10. Pet. App. B at 84. She asserted, *inter alia*, that she had received ineffective legal counsel in regard to a potentially meritorious defense of EED.[1] *Id.* at 85. In support of her motion, Mrs. DeLuca for the first time provided to a court her account of having shot Bissett after having been abducted, threatened, and ultimately raped by him. *Id.* at 84-85. The court denied her motion for vacatur, and leave to appeal was denied. *Id.* at 85.

---

[1] Under New York Penal Law §§ 125.20(2), 125.25(1)(a), a defendant charged with murder who successfully shows that he or she acted under an extreme emotional disturbance is guilty of manslaughter, not murder.

## 2. The Federal Court Proceedings

In June 1990, Mrs. DeLuca filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of New York raising the same arguments made in her state post-conviction motion. *Id.* The matter was referred by Judge Robert J. Ward to Magistrate Judge Kathleen A. Roberts for an evidentiary hearing.

### A. The Hearing

Mrs. DeLuca presented the testimony of seven witnesses, including her own and that of her trial attorney, John Patten, Esq. *See* Pet. App. C at 156-194. Much of the hearing proof centered on the evidence that could have served as the foundation for a defense based on Bissett's abduction and rape of Mrs. DeLuca. Mrs. DeLuca testified that on September 21, 1982 she and her husband went to a party at a Bronx restaurant to celebrate her birthday, her recent retirement from the police force, and the restaurant softball team's recent victory. *Id.* at 158-159. She took her husband home early because he was not feeling well and then returned to the party at his insistence because she was the guest of honor. *Id.* at 158. She proceeded with a friend, Karyn Travelino, to an after-hours club in the Bronx, where Bissett and his two friends were also socializing. *Id.*

Later, as she left the club, she was accosted by Bissett and his friends, who forced her into her car. Bissett told her: "We're going to have some fun. Get in the car and don't say anything. My friends and I are going to have a party. Just do as we say and you won't get hurt." *Id.* at 159. One of the men threatened her with a knife. *Id.* Ultimately, the group ended up at an adult motel in the Bronx, where Bissett punched Mrs. DeLuca and threatened to kill her after she refused his sexual advances. *Id.* at 160-61. After the motel's management asked the group to leave following a disturbance by Bissett's two friends, Mrs. DeLuca was forced to drive the men back to Bissett's van. *Id.* Bissett ordered her inside, then alone drove her to a location near Fordham Road where the van was later found. *Id.* at 162.

There, Bissett forced her to have oral sex and attempted to have anal sex with her. *Id.* He then forced her to have vaginal sex. *Id.* When he passed out a short time later, Mrs. DeLuca hit him with a bottle, put her clothes on, and escaped. *Id.*

After she arrived at her home, she became emotionally distraught, and that evening told her husband what had happened. *Id.* at 163. Her husband, also a retired New York City police officer, persuaded her to go to the hospital with him. *Id.* at 163-164. Before leaving, she took her gun because she felt vulnerable. *Id.* at 164. On the way, her husband insisted on seeing the scene of the rape so he could accurately report it to the police. *Id.* at 163-164. They spotted the van still parked at the site and approached it from the rear on opposite sides. *Id.* at 164. They opened the doors, and seconds later Bissett lunged from the back toward Mrs. DeLuca's husband. *Id.* After knocking him down, he turned toward Mrs. DeLuca, saying: "Bitch, this time you're dead. I'm going to kill you." *Id.* As he grabbed her left arm and tried to pull her in the van, she shot him. *Id.* The DeLucas then drove back home, where Mr. DeLuca notified the police. *Id.* at 165.

Mrs. DeLuca further testified at the hearing before the magistrate judge that she provided this version of events to Patten and his law partner, Francis GaNun. *Id.* Both confirmed at the hearing that Mrs. DeLuca's testimony was consistent with what they were told in 1982. *Id.* at 180-81, 185-87. Mrs. DeLuca also made counsel aware that she was a lesbian and that her relationship with her husband was non-traditional and based on friendship. *Id.* at 165.

The hearing also revealed other evidence that would have bolstered Mrs. DeLuca's defense, including medical and physical evidence consistent with her account of a rape and evidence of a prior similar attack by Bissett on another woman. *Id.* at 167-68. In addition, Mrs. DeLuca's husband and Karyn Travelino were available at the time of trial to substantiate various aspects of Mrs. DeLuca's account. *Id.* at 167, 190.

The balance of the hearing focused on Mrs. DeLuca's interaction with her counsel, including their discussions of a possible EED defense. Patten testified that he had discussed the EED defense with Mrs. DeLuca early on in his engagement and that the defense was rejected because of Mrs. DeLuca's aversion to seeing a psychiatrist, which he saw as critical to mounting the defense. *Id.* at 193-94. Patten said that his trial strategy was to choose between two possible defenses: (i) the People's failure to prove beyond a reasonable doubt that Mrs. DeLuca, and not her husband, killed Bissett and (ii) justification based on self-defense. *Id.* at 191. Following the close of the People's case, Patten decided against putting Mrs. DeLuca on the stand or presenting a defense and instead opted to rely on the possibility that the People had failed to prove their case beyond a reasonable doubt. *Id.* at 191-92.

Mrs. DeLuca's testimony at the hearing contradicted key aspects of Patten's account. She testified that she was unaware of the EED defense, as she now understands it, prior to trial. *Id.* at 169. During the pretrial phase of her case, Patten discussed only an insanity defense, which he referred to as "EDP" or "EEP". Pet. App. B at 91. He told her the story of a police officer who shot a young boy, successfully asserted the defense, and was then institutionalized for less than a year. Pet. App. C at 168-69. Mrs. DeLuca expressed skepticism about an insanity defense because, in her view, she could not be deemed insane. *Id.* at 169. Patten made an appointment for her to see a psychiatrist, but later canceled the appointment. *Id.* Mrs. DeLuca testified that she remained willing to see a psychiatrist. Pet. App. B at 94. She further testified that she was always willing and ready to take the stand in her own defense. Pet. App. C at 166, 171. Two experts consulted by the defense stated that the possibility of an EED defense was never raised by Patten in their meetings. Pet. App. B at 92-93. Significantly, notes taken by Daniel Schwartz, a psychiatrist who was consulted by Patten, showed that only two defense theories, reasonable doubt and self-defense, were discussed and contained no reference to EED. *Id.* at 92.

### B. The District Court's Decision

The magistrate judge recommended that the petition be denied. Pet. App. C at 220. The district court, after reviewing the record de novo and considering Mrs. DeLuca's objections to the magistrate judge's report, declined to follow the recommendation and instead granted the petition. The court found:

> Patten seriously overestimated the effectiveness of the reasonable doubt defense, and likewise, grossly underestimated the strength of the State's case against his client. As a result, the jury was given no theory -- other than the State's -- to consider in evaluating the strong circumstantial evidence implicating DeLuca. Pet. App. B at 89.

In regard specifically to the EED defense, the district court concluded that, even if Patten's account of his discussions of the defense with Mrs. DeLuca were accepted, his own confusion about EED prevented him from providing meaningful consultation to his client and rendered his representation objectively unreasonable under *Strickland*, 466 U.S. at 688. *Id.* at 97. The district court also found that Mrs. DeLuca had made the showing of prejudice required by *Strickland*'s second prong, holding: "Had DeLuca been properly advised concerning the EED defense, there is every reason to credit her claim that she would have testified, hoping for an outright acquittal, but willing to accept a manslaughter conviction under the EED doctrine as an alternative option." *Id.*

### C. The Court of Appeals' Decision

The court of appeals, with one judge dissenting, affirmed. The court found that the record "well supported" the district court's conclusion that "rather than preparing for the possibility of presenting the EED defense, Patten abandoned it early for completely inadequate reasons." Pet. App. A at 43. Specifically, the court noted, Patten discarded the defense because he believed Mrs. DeLuca would not see a psychiatrist, yet under New York law psychiatric testimony is not required

in mounting an EED defense. *Id.* at 40. Moreover, as shown by his own testimony, Patten failed to have a rudimentary understanding of EED, misconstruing it to be a form of insanity defense. *Id.* at 43-44. Yet, under a "realistic appraisal of the strength of the People's case, and of the other defenses contemplated by Patten, [EED] offered the only realistic escape from the likelihood of a conviction for murder in the second degree," the court concluded. *Id.* at 41. The record demonstrated that, without the EED defense, Mrs. DeLuca faced "very bleak options" while the People had mounted a "compelling case of murder, showing her in a most unsympathetic light." *Id.* at 42. Under those circumstances, the court of appeals held, Patten's failure to give adequate consideration to a possible EED defense was objectively unreasonable under *Strickland*. *Id.* at 39. The court also found ample support in the record to affirm the district court's finding of prejudice under *Strickland* in that there was "a reasonable probability" that the outcome of the trial would have been different had Mrs. DeLuca received constitutionally adequate representation. *Id.* at 51.

## ARGUMENT

**The petition for a writ of certiorari raises no substantive questions of law, seeks only a review of factual and evidentiary matters of interest solely to the immediate parties, and, as a result, does not warrant this Court's review.**

This petition involves nothing more than the straightforward -- and, in fact, carefully considered -- application of the well-settled rules of *Strickland v. Washington* by the courts below to the evidence presented. Though petitioners attempt to portray the decision of the court of appeals as a grave assault on *Strickland*'s legal principles, and even concoct a "split" in the circuits to support their theory, the true essence of their petition is transparent: They object to the legal conclusions arrived at by the court of appeals from the facts on the record. *See* Pet. at 17-19. Such a fact-bound, case-specific claim does not warrant this Court's further attention. As this

Court has long made clear, certiorari is not granted "to review evidence and discuss specific facts," *United States v. Johnston*, 268 U.S. 220, 227 (1925), nor to address a question that, while of great interest to the parties, is "not one of gravity and general importance." *Fields v. United States*, 205 U.S. 292, 296 (1907).

Far from being a "clear break from *Strickland*" (Pet. at 14), the court of appeals' decision is in fact a textbook example of how a court properly employs *Strickland* to analyze a claim of ineffective assistance of counsel. The court acknowledged that it was required to indulge a "strong presumption" that trial counsel's conduct was reasonable and that it was not authorized to "second-guess" reasonable strategic decisions. Pet. App. A at 39. Because this was a case that squarely implicated tactical decisions, the court paid special attention to *Strickland*'s instruction that "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." *Id.* at 47; *Strickland*, 466 U.S. at 690.

What both courts below found, and articulated clearly in their decisions, were the precise facts that made Patten's early abandonment of the EED defense not only challengeable but constitutionally deficient. The record demonstrated that the defense that Patten prepared and presented offered no significant chance of acquittal. The reasonable doubt defense was premised on having the jury believe that Mrs. DeLuca's husband might have been the murderer, but there was no evidence linking him to the crime and compelling circumstantial evidence linking Mrs. DeLuca to the shooting. Pet. App. A at 41-42. In the face of the People's compelling case, a critical and viable defense, EED, was rejected by Patten because of a gravely mistaken view of settled New York law -- *i.e.*, that psychiatric testimony was required to mount the defense and that the defense was a form of insanity plea. *Id.* at 42-43.

In short, as the court of appeals concluded, this is a case where the decisions of counsel were premised on objectively unrealistic appraisals of the facts and plain errors about the

state of the law. Such factual and legal misapprehensions are not tactical choices about which reasonable attorneys may disagree and for which a court must show deference under *Strickland*. Under *Strickland*, "strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on the investigation." *Strickland*, 466 U.S. at 690. Here, as the courts below held, the flawed judgments that limited investigation resulted in the kind of "objectively unreasonable" representation that *Strickland* was specifically designed to remedy.

Confronted with the careful fact-specific analysis of the court of appeals, petitioners thrash about to make a case for certiorari by suggesting that the court of appeals made two legal errors in its application of *Strickland* to the facts: first, that the court engaged in impermissible "second-guessing" of trial counsel's strategy and, second, that its decision may encourage intrusive supervision of defense attorneys' performance by the courts.[2] Pet. at 14. Even were we to assume that such errors of law are actually present in the court of appeals' opinion, neither raises the sort of broadly important legal issue that extends beyond the facts of this case and might justify this Court's review. At worst, such errors would constitute a misapplication of the *Strickland* analysis to the evidence in a specific case. Neither implicitly nor explicitly does the court of appeals' decision break new legal ground, challenge established law, set forth a new analytical methodology, or extend established law into a novel area. Thus, even if petitioners' assessment of the opinion below were accurate, no basis for certiorari would be established. In fact, however,

---

[2] Petitioners also make a half-hearted attempt to argue that the court of appeals should have remanded the case to the district court for further fact-finding because the district court made certain credibility determinations without hearing live testimony. Pet. at 15. As the court of appeals explained, no part of its decision relied upon those credibility determinations. Pet. App. A at 45. Thus, the issue was wholly irrelevant to the court of appeals' determination and has no bearing on this petition.

petitioners are able to claim error only by distorting the plain meaning of the court of appeals' decision.

Petitioners' "second-guessing" argument is premised on their erroneous assertion that the court of appeals ruled as it did because it "felt" in hindsight that the abandoned EED defense was superior to the strategy Patten actually chose. Pet. at 14. To the contrary, the essence of the court's analysis was not what decision Patten made but how he made it. The court could not have been plainer: "Had Patten made a considered decision, after investigation, not to pursue an EED defense, we would be extremely reluctant to second-guess that decision." Pet. App. A at 47. The clear -- and proper -- focus of the court's attention was not the outcome of Patten's strategy, but the unreasonable manner in which he came to embrace it. As the court stated: "In our view, Patten's abandonment of the EED defense was so hasty and based on so little, that in light of the obvious benefits that could be gained from the defense, his decision cannot be considered either a reasonable professional judgment or a reasoned strategic choice." *Id.*

It is particularly telling that petitioners' second-guessing argument consists principally of an extended discussion of the factors *they* would have considered in deciding what defense to employ. Pet. at 17-19. That, of course, begs the question, as well as underscoring the essentially fact-bound nature of petitioners' claims. The issue here under *Strickland*'s reasonableness analysis is not whether a plausible justification for a strategic choice can be conjured up after the fact on appeal, but whether, at the time of representation, counsel met his or her "duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary...." *Strickland*, 466 U.S. at 691. In making their argument, petitioners simply ignore the objectively flawed decision-making of counsel, which was central to the court of appeals' decision. *See* Pet. at 17-20. Reduced to its basic terms, petitioners' argument is nothing more than an assertion that Patten's belief in his strategy should have been deemed reasonable by the court of appeals. *See* Pet. at 17. Their

disagreement with the court on that fact-specific determination does not make this into a case worthy of certiorari.

Petitioners fare no better with their second argument, the puzzling contention that this case involved "intrusive oversight" that somehow warrants this Court's review. Petitioners acknowledge, as they must, that *Strickland* itself sanctioned inquiry into attorney-client conversations. Pet. at 21; *Strickland*, 466 U.S. at 691. Petitioners further concede that such an inquiry is manifestly proper when a defendant is seeking to show that "a facially incompetent decision appearing in the record was not motivated by a legitimate strategy." Pet. at 21. Here, of course, that is precisely what occurred. The "only realistic" defense available to Mrs. DeLuca was never raised even after the People had "presented a compelling case of murder, showing her in a most unsympathetic light." Pet. App. A at 41-42. The courts' inquiry into the decision-making behind that otherwise inexplicable strategy was not only appropriate but necessary under *Strickland* to determine whether counsel had made the reasonable investigation required by the Constitution.

Far from being intrusive or in any way out of the ordinary, the inquiry here involved the routine and unremarkable taking of testimony from the defendant and her attorney as to their deliberations. *See, e.g., Strickland*, 466 U.S. at 678 (both trial counsel and trial judge called to testify at habeas hearing). While petitioners conjure up dire scenarios of what trial courts and trial counsel will have to do to preserve a record if the decision is left to stand, nothing in the decision even remotely suggests that changes are needed in either trial procedure or the process of attorney-client consultation. Moreover, not a single dispositive issue in this case turned on the absence of proof. As in any habeas petition, the burden of proof remained squarely on Mrs. DeLuca, who affirmatively demonstrated the ineffectiveness of counsel through the conventional fact-finding employed in any litigation. There is no "intrusion" issue here, let alone one that raises a legal question appropriate for certiorari.

Finally, the Court need not linger long on petitioners' contrived attempt to discern a split between this case and the Seventh Circuit's decision in *Jones v. Page*, 76 F.3d 831 (7th Cir. 1996). *Jones*, like the instant case, involved nothing more than an assessment of whether the facts on the record demonstrated that the defense attorney had failed to make an adequate investigation of a potential defense (insanity) under the standards of *Strickland*. The contrast in the two records is striking. Where the evidence here showed that Patten failed to grasp the law and evidentiary mechanics of the EED defense, and as a result failed to consider it adequately, the attorney in *Jones* was well-versed in the insanity defense, consulted in a meaningful way with a psychologist about the issue,[3] made his own observations of his client, and interviewed a witness about his client's conduct at the scene of the crime. 76 F.3d at 842-43. The differing outcomes in the two cases are fully explained by their starkly different facts -- simply put, there was an objectively reasonable investigation in one case and not in the other. Contrary to petitioners' suggestions, the analysis in *Jones* did not turn on "the importance of defendant's own actions," Pet. at 24, nor did the court of appeals in the instant case fail to consider such actions. *See*, 76 F.3d at 843 (citing various factors determinative in *Jones*) and Pet. App. A at 46 (discussing Mrs. DeLuca's purported reluctance to see a psychiatrist). In short, the legal analysis in the two cases is indistinguishable, and both opinions are in complete conformity with the dictates of *Strickland*.

---

[3] By contrast, in Mrs. DeLuca's case the notes of the consulting psychiatrist, Dr. Schwartz, demonstrated that EED was not raised by her attorney in their discussions. Pet. App. B at 92.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

MARK F. POMERANTZ
ROGERS & WELLS
200 Park Avenue
New York, New York 10166
(212) 878-8000
*Counsel of Record*

DAVID T. GRUDBERG
JACOBS, GRUDBERG, BELT & DOW, P.C.
350 Orange Street - P.O. Box 606
New Haven, Connecticut 06503
(203) 772-3100

WARREN L. FELDMAN
DAVID E. MCCRAW
ROGERS & WELLS

Dated: New York, New York
July 24, 1996